

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

Ana R. Olivella Rivera
PLAINTIFF

Vs.

Popular Leasing and Rental, Inc.,
and others.

DEFENDANTS

Civil No. 98-2267

**CREDIT COLLECTION
DAMAGES**

**URGENT MOTION REQUESTING SEVERE SANCTIONS
AND DISPOSITIVE ORDER**

TO THE HONORABLE COURT:

**COMES NOW Plaintiff through the undersigned attorneys and
respectfully alleges and prays:**

1. In the pre-trial conference of November 29, 2005, at 9:30AM, held in the presence Honorable Judge Magistrate Gelpi, brother counsel Mr. David López Pumarejo, Esq.; did not appear nor presented excuses.

2. An order to show cause was notified to said counselor within five (5) days. He had to reply within five (5) days of said order; was never has done saw.

3. Also he was order to produce the deposition of Sylvia Cardona with said period, in order to adequately reply and/or oppose a summary judgment jointly filed by Defendants. Mrs. Sylvia Cardona was deposed more than five (5) years ago. She is the key witness of both Plaintiff and Defendant. She was the person which wrote to Plaintiff regarding due to Banco Popular of Puerto Rico's failings and negligence. or gross erroneous conduct; and whereby it requested pardon from Plaintiff.

4. To this date neither order were complied by Popular Leasing or its legal representative.

5. This situation has delayed the final discovery in this case.

6. Moreover, Plaintiff remitted a letter respecting date and hour when Mrs. Sylvia Cardona could be deposed. This was remitted to sister counselor Mrs. Otero, of Otero & López.

7. To this date Otero has not given a written reply. However on December 16, 2005, (early in the morning) she produced a date not agreeable to undersigned due to conflict in calendar. While present in an other pretrial in the case of Osvaldo Valentín vs. ELA before Honorable Judge Fuster, Superior Judge in Caguas Superior Court. At said conference their were seven (7) attorneys against undersigned; and said

request could not be entertain due to the severe complexity of said case which took all morning. She left without finalizing the agreement on the deposition date. Moreover, she told us she could give dates in writing; to this date attorney Otero has not produce said deposition date for Mrs. Sylvia Cardona.

8. Due to the proximity of holidays and due to the fact that undersigned will be out of Puerto Rico from January 3, 2006 to January 13, 2006 (personally knowned by Honorable Judge Gelpi) as stated in the pretrial conference, undersigned is caught between the situation of complying with the January 15, 2005, deadline of the Honorable Court and his personal obligation with his family outside of Puerto Rico. The reply is and response to said summary judgment is condition to the presentation of Mrs. Sylvia Cardona transcript deposition or her second deposition.

9. Therefore, it is respectfully requested that severe sanctions be imposed against Defendants that due to the non compliance with the pretrial conference appearance, the subsequent pre-trial order to show cause issued that same day and also the non productions of the transcript and/or deposition date for witness Sylvia Cardona, who was previously deposed but said transcript has not been produced to this date by Brother

attorney David López Pumarejo. Said deposition was taken by the same court reporter, who took also the deposition of Mrs. Ana R. Olivella, as well as her father and mother. This deposition were taken at brother counselor David López Pumarejo at his office at in the Calle del Parque, Santurce, Puerto Rico.

10. Thus, sanctions should be imposed against Defendant:

a) First, an automatic denial of motion for summary judgment should be granted; b) Second, the elimination of all the pleadings in the answer to the complaint be granted; c) The Honorable Court should enter a default order against both defendants; but specifically Popular Leasing and Rental, Co., which has not complied with its attendance at the pretrial conference before Honorable Magistrate Judge Gustavo Gelpi, the order to produce the deposition of Sylvia Cardona, the payment of the \$200 fine and the compliance with the order to show cause within five (5) days. More than five (5) days has lapsed but no answer has been received to the above. The trial was held on November 29, 2005.

11. Failure to attend to a pretrial conference can lead to sanction either the dismissal of the complaint or the elimination of entire defense

pleadings. Templet vs. Hydro Chemical, Inc., 367 F.3d 473, 481 (5th Circuit 2004); Lititz Mutual Ins. Co. vs. Royal Insurance, Co. of America, 58 Fd. Suppl. 2d 1287; Trilogy Communication, Inc. vs. Times Fiber Communication, Inc., 109 F3d., 739; Hernández vs. Camire Realty Ass., 182 F3d. 121; Direct TV., Inc. vs. Huyunk, 318 F. Supp. 1122.

12. In the case, Defendant has violated three court orders, to wit:

a) Has not show cause for its non-appearance on November 29, 2005.

b) Defendant has not paid the fine imposed of \$200.

c) Defendant has not produced the deposition of Mrs. Sylvia Cardona, an officer of Banco Popular of Puerto Rico and/or Popular Leasing and Rental, Co.

d) Therefore, elimination of Defendant pleading and default for both Defendant are warranted and should be granted as a matter of law. Moreover, the Honorable Court also should strike the motion for summary judgment jointly filed by Defendants as an additional sanction for not obeying the Honorable Court's order. Tower Venture vs. City of Westfield, 296 F3d. 43, 45-46. In this case there is a clear record in delay by Defendant in not presenting the transcript of Mrs. Sylvia

Cardona's deposition or her production for a second deposition. Also there is a delay in not complying with the order to show cause and economic sanction imposed.

13. Wherefore, it is respectfully requested that elimination of all defense pleadings be granted, default be entered and summon judgment be denied and stricken from the second.

14. Said disobedience of Defendant and their delay has caused severe prejudice to Plaintiff for it may not respond or oppose or time Defendant Motion for Summary Judgment and/or Dismiss (Docket No. 128) for Mrs. Sylvia Cardona's deposition is key to the solution of this case. See enclosed letter dated November, 1997, signed by Sylvia Cardona. To this date neither the transcript, nor her production for a second deposition has been notified and this will cause extreme prejudice to Plaintiff could not to respond on time before January 15, 2006 deadline.

RESPECTFULLY SUBMITTED.

In Caguas, Puerto Rico, this 20 days of December, 2005.

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